

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GIOVANNI "JOHN" RIGGI,

Petitioner,

-v.-

UNITED STATES,

Respondent.
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USDC SDNY
DOCUMENT
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DOC #:
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04 CIV. 7852 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On July 5, 2007, the Honorable Gabriel W. Gorenstein, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned matter recommending that this petition for habeas corpus pursuant be dismissed. After the Report issued, petitioner submitted an objection dated July 17, 2007. Having considered the matter de novo in light of this objection, the Court finds itself in total agreement with the reasoning set forth in the Report, which the Court hereby adopts by reference.

In his objection, petitioner claims for the first time that he did not enter into his plea agreement, and in particular its waiver of appeal provision, knowingly and voluntarily, supported by an affidavit he claims to have first submitted on January 27, 2005 that was never received. Because petitioner failed to raise this issue in his original petition, however, he cannot do so now for the first time in an objection to the Report. See McPherson v. Johnson, 1996 U.S. Dist. LEXIS 18175, 1996 WL 706899, at *2 (S.D.N.Y. Dec. 9, 1996) ("Petitioner cannot raise, in his objection

to the Magistrate Judge's Report, new claims not raised in his initial petition") (citation omitted); Jerrel v. Keane, 1995 U.S. Dist. LEXIS 16463, 1995 WL 653369, at *2 (S.D.N.Y. Nov. 6, 1995). Moreover, the affidavit's vague and self-serving allegations -- even assuming, arguendo, that they are properly before this Court at all -- are contradicted by the detailed, specific affidavit of petitioner's counsel. The Court rejects them, without further proceedings, as not credible. See Chang v. United States, 250 F.3d 79 (2d Cir. 2001).

Accordingly, the Court hereby dismisses Riggi's habeas petition with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, see 28 U.S.C. § 2253, and the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. Moreover, as petitioner's claims lack any arguable basis in law or fact, permission to proceed in forma pauperis is also denied. 28 U.S.C. § 1915(g); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
August, 3, 2007